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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 BRUCE EKLUND, an individual,

10 Plaintiff,

11 v.

12 THE CITY OF SEATTLE, et al.,

13 Defendants.

C06-1815Z

ORDER

14
15 THIS MATTER comes before the Court on Defendants Mark Parcher, Gayle Tajima,
16 and Yolande Williams' Motion for Statutory Penalties and Attorney Fees under
17 Washington's Anti-SLAPP Statute, RCW 4.24.510, docket no. 315. Having considered the
18 pleadings and declarations filed in support of and in opposition to the motion, the Court
19 GRANTS Defendants' Motion, docket no. 315, for the reasons outlined in this Order.

20 Washington's Anti-SLAPP statute provides, in pertinent part:

21 A person who communicates a complaint or information to any branch or
22 agency of federal, state, or local government . . . is immune from civil liability
23 based upon the communication to the agency or organization regarding any
24 matter reasonably of concern to that agency or organization. A person
25 prevailing upon the defense provided for in this section is entitled to recover
expenses and reasonable attorneys' fees incurred in establishing the defense
and in addition shall receive statutory damages of ten thousand dollars.
Statutory damages may be denied if the court finds that the complaint or
information was communicated in bad faith.

26 RCW 4.24.510.

ORDER 1-

1 Defendants Parcher, Tajima and Williams moved prior to trial for dismissal of
2 Eklund's wrongful termination claim and for statutory penalties and attorneys' fees based on
3 Washington's Anti-SLAPP statute. Defs.' Mot. Sum. J., docket no. 137, at 7-10. They
4 argued that Eklund's wrongful termination claim against them was based on their
5 involvement in the investigation and reporting of the ticket-fixing scheme that ultimately led
6 to Eklund's termination. Specifically, Parcher prepared a written summary of the findings of
7 the ticket-fixing investigation and recommended discipline for five Seattle Municipal Court
8 ("SMC") employees, including Eklund; Parcher, Tajima and Williams, as members of the
9 Executive Leadership Team ("ELT"), reviewed and discussed the findings, and then
10 concluded that Eklund be terminated; and Williams then forwarded the joint recommendation
11 to Judge Bonner. On September 12, 2008, the Court entered an Order concluding that:

12 . . . Defendants are not precluded from seeking relief under the Anti-SLAPP
13 Law, RCW 4.24.510, in the event they prevail at trial. This statute applies to
14 governmental entities. See Gontmakher v. City of Bellevue, 120 Wn. App. 365
15 (2004). Governmental individuals and the City of Seattle may seek relief under
this statute. Plaintiff's contention that RCW 4.24.510 is inapplicable because it
protects communication to governmental agencies, rather than within
governmental agencies, is without merit.

16 Order, docket no. 179, at 2. Eklund has thus been on notice since September 2008 that he
17 would be at risk for attorneys' fees and statutory damages under Washington's Anti-SLAPP
18 statute in the event Parcher, Tajima and Williams prevailed at trial on Eklund's wrongful
19 termination claim.

20 On March 19, 2006, at the close of the trial, the Court dismissed Defendants Parcher,
21 Tajima and Williams on Eklund's first claim for wrongful termination in violation of public
22 policy as a matter of law. Minutes, docket no. 296.¹ As a result of their prevailing party

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24 ¹ On March 23, 2009, the jury returned a verdict in favor of Defendants Parcher, Tajima and
25 Williams as to Eklund's 42 U.S.C. § 1983 claim for violation of Eklund's procedural due process
rights. Jury Verdict, docket no. 301. Defendants Parcher, Tajima and Williams did not argue
26 in their summary judgment motion, and they do not now argue in their fees motion, that the Anti-
SLAPP statute immunizes them from liability for Eklund's 42 U.S.C. § 1983 claim. Defs.' Mot.
Sum. J., at 8 n.5.

1 status with regard to Eklund’s wrongful termination claim, Parcher, Tajima and Williams
2 now move for attorneys’ fees and statutory damages under Washington’s Anti-SLAPP
3 statute.

4 Eklund argues that Washington’s Anti-SLAPP statute should not apply to intra-
5 agency communications. The Court already ruled that governmental individuals and entities
6 may seek relief under the statute and that the statute applies to protect communications
7 within as well as to governmental agencies. Washington courts have expressly rejected a
8 limited definition of the word “person” under RCW 4.24.510 that would have only applied
9 the Anti-SLAPP statute to protect “citizens” or “non-governmental entities.” See
10 Gontmakher, 120 Wn. App. at 371, 374 (declining to follow dicta to the contrary in
11 Skimming v. Boxer, 119 Wn. App. 748 (2004)). In Gontmakher, a Bellevue city employee
12 reported clear-cutting on private land to the State Department of Natural Resources (“DNR”),
13 and the private landowners sued the City of Bellevue based on the employee’s
14 communication with the DNR. The Gontmakher court stated that “there is a strong public
15 policy rationale for including governmental entities in the definition of ‘person,’” concluding
16 that “reports by governmental agencies are common and important to proper agency
17 functioning.” Id. at 372; see also RCW 4.24.500 (statutory purpose to encourage information
18 gathering that will lead to “the efficient operation of government”).

19 This information-gathering rationale applies with equal force to situations where a
20 government actor is reporting to his or her own agency, especially because public employees
21 are often in the best position to report on matters of reasonable concern to their own
22 agencies. Eklund argues that applying the statute to intra-agency communications
23 discourages public participation. As pointed out by Defendants, Eklund was free to sue the
24 City for wrongful termination, and Judge Bonner as the actual decision-maker; however,
25 when Eklund targeted the people who reported the ticket-fixing, he strayed into territory
26 protected by the Anti-SLAPP statute. Defendants Parcher, Tajima and Williams have

1 submitted declarations in connection with their reply brief explaining how it was
2 discouraging to them as public employees to be sued for reporting misconduct. Parcher
3 Decl., docket no. 359, ¶¶ 2-3; Tajima Decl., docket no. 360, ¶ 2; Williams Decl., docket no.
4 361, ¶ 2. Applying the Anti-SLAPP statute to these public sector employees upholds the
5 purpose of the statute to encourage communications within public agencies on matters of
6 reasonable concern to them, and will not discourage wrongful termination claims against
7 employers.

8 Eklund argues that his wrongful termination claim was not based on the intra-agency
9 communications of Parcher, Tajima and Williams regarding Eklund's ticket-fixing. The
10 Court disagrees. The involvement of these defendants in Eklund's termination was the
11 supplying of information and communicating about Eklund's involvement in ticket-fixing to
12 various persons within the SMC. See, e.g., Trial Ex. A-71 (Parcher's June 10, 2004 memo to
13 Williams); Trial Ex. A-100 (Parcher's draft of ELT's disciplinary recommendation as to
14 Eklund); Trial Exs. A-102 and A-119 (Williams' memos of June 16, 2004 and June 22,
15 2004); see also Tajima Decl., docket no. 139, ¶ 15 (discussing her involvement on ELT).

16 Eklund argues that the statute should not apply to Defendants Parcher, Tajima and
17 Williams because they have not personally incurred any attorneys' fees. This is another
18 rendition of Eklund's argument that the Anti-SLAPP statute should not apply to government
19 officials and intra-agency communications, which the Court rejects. The City of Seattle has
20 had to unnecessarily expend legal resources as a result of Eklund's wrongful termination
21 claim against Parcher, Tajima and Williams. Clearly, the City of Seattle will be reimbursed
22 for any attorneys' fees awarded under the Anti-SLAPP statute to Parcher, Williams and
23 Tajima, and these individual defendants will not receive a personal windfall.

24 Defendants Parcher, Tajima and Williams move for \$55,323.75 in attorneys' fees,
25 representing \$28,525.00 charged by Assistant City Attorney Erin Overbey (81.5 hours
26 multiplied by the hourly rate of \$350 per hour) and \$26,798.75 charged by Assistant City

1 Attorney Amy Lowen (97.45 hours multiplied by the hourly rate of \$275 per hour). Overbey
2 Decl., docket no. 316, ¶ 3; Lowen Decl., docket no. 317, ¶ 3. The rates are based on
3 prevailing local rates for attorneys with similar experience. Overbey Decl. ¶ 2; Lowen Decl.
4 ¶ 2. These are reasonable and legitimate rates. United States v. Big D Enters., Inc., 184 F.3d
5 924, 936 (8th Cir. 1999) (rates in local legal community serve as benchmark for rates for
6 government's attorney); United States v. City of Jackson, 359 F.3d 727, 733 (5th Cir. 2004)
7 (upholding payment for public sector attorneys at market rates). The attorneys' fee requests
8 represent just over ten percent of the fees incurred by the defense in this case. Defendants
9 have not claimed fees for time spent in defending Judge Bonner or the City of Seattle, for
10 time spent on discovery and research relating to all Defendants, or for time spent by
11 Assistant City Attorney Katrina Kelly. Overbey Decl. ¶ 3; Lowen Decl. ¶ 3. The request for
12 \$55,323.75 in attorneys' fees is reasonable.

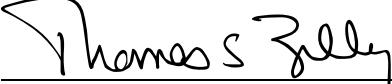
13 In addition to attorneys' fees, Defendants Parcher, Tajima and Williams move for
14 \$10,000 each in statutory damages, which are mandatory under the Anti-SLAPP statute ("...
15 A person prevailing upon the defense . . . *shall* receive statutory damages of ten thousand
16 dollars. . . .") unless "the complaint or information was communicated in bad faith." RCW
17 4.24.510. Eklund fails to address Defendants' request for statutory damages and makes no
18 argument that the communications were made in bad faith. The Court finds that the
19 communications were made in good faith. Accordingly, the Court awards \$10,000 each in
20 statutory damages to Parcher, Tajima and Williams.

21 In conclusion, Defendants Parcher, Tajima and Williams are entitled to attorneys' fees
22 and statutory damages under the Anti-SLAPP statute for having to defend against the
23 wrongful termination claim, which Eklund alleged against them as a result of their
24 communications to the SMC regarding Eklund's ticket-fixing. The Court GRANTS
25 Defendants Mark Parcher, Gayle Tajima, and Yolande Williams' Motion for Statutory
26 Penalties and Attorney Fees under Washington's Anti-SLAPP Statute, RCW 4.24.510,

1 docket no. 315, and awards Defendants Parcher, Tajima and Williams attorneys' fees in the
2 amount of \$55,323.75 and statutory damages in the amount of \$10,000 per person, for a total
3 award of \$85,323.75.

4 **IT IS SO ORDERED.**

5 DATED this 30th day of June, 2009.

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7 Thomas S. Zilly
8 United States District Judge

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